

REMARKS

Interview request

Applicants also respectfully request a telephonic interview after the Examiner has reviewed the instant response and amendment. Applicants request the Examiner call Applicants' representative at 858 720 5133.

Status of the Claims*Pending claims*

Claims 1 to 38 are pending.

Claims canceled and added in the instant amendment

Claims 37 and 38, are canceled, without prejudice or disclaimer and claims 39 and 40 are added. Thus, after entry of the instant amendment, claims 1 to 36, 39 and 40, will be pending and under consideration.

Support for the Claim Amendments

The specification sets forth an extensive description of the invention in the new and amended claims. Accordingly, Applicants respectfully submit that no new matter is introduced by the instant amendment.

Group Restriction Requirement

The Patent Office alleged that the pending claims of the application are directed to six separate and distinct inventions under 35 U.S.C. §121, as set forth in detail in paragraphs 1 and 2, page 2, of the OA:

Group I: including claims 1 to 36, drawn to methods for isolating and maintaining a cell from a mixed population of uncultivated cells, and classified in, inter alia, class 435, subclass 7.1.

Group II: including claims 37 and 38, drawn to methods for identifying a polynucleotide encoding an activity of interest, and classified in, inter alia, class 435, subclass 6.

The Group Election

In response to the Group Restriction Requirement, Applicants elect Group I, including, inter alia, pending claims 1 to 36 (and new claims 39 and 40), drawn to, inter alia, methods for isolating and maintaining a cell from a mixed population of uncultivated cells, and classified in, inter alia, class 435, subclass 7.1.

The Species Election Requirement

The Office alleges that Group I contains claims directed to the following patentably distinct species, as set forth in detail in paragraph 3, page 2, of the OA:

- (1) the porous gel microdroplet (GMD) comprises a hydrogel matrix (claim 13);
- (2) the porous gel microdroplet (GMD) comprises a selectively permeable membrane (claim 13);
- (3) the porous gel microdroplet (GMD) comprises a CELMIX™ emulsion matrix (claim 14);
- (4) the porous gel microdroplet (GMD) comprises a CELMIX™ encapsulation matrix (claim 14).

The Office alleges that Group I also contains claims directed to the following patentably distinct species, as set forth in detail in paragraph 4, page 3, of the OA:

- (5) the growth column comprises a capillary (claim 17);
- (6) the growth column comprises a chromatography column (claim 18).

[for the record, Applicants note that in claim 18 the growth column comprises a capillary array (e.g., GIGAMATRIX™), not a chromatography column).

The Office alleges that Group I also contains claims directed to the following patentably distinct species, as set forth in detail in paragraph 5, page 4, of the OA:

- (7) conditions allowing the encapsulated cell to survive and be maintained comprise providing nutrients at *in situ* concentrations (claim 21);
- (8) conditions allowing the encapsulated cell to survive and be maintained comprise flowing an aqueous nutrient mixture through the growth column (claim 22).

The Species Elections

In response, Applicants elect the following species:

- (1) the porous gel microdroplet (GMD) comprises a hydrogel matrix (claim 13).
- (5) the growth column comprises a capillary (claim 17);
- (7) conditions allowing the encapsulated cell to survive and be maintained comprise providing nutrients at *in situ* concentrations (claim 21).

When the elected species is held to be allowable, Applicants are entitled to consideration (examination) of additional species; if all species are held to be allowable, a generic claim should be allowed; MPEP §821.04; pg 800-63, 8th Edition, Rev. 2, May 2004; In re Ochiai, 37 USPQ2d 1127 (Fed. Cir. 1995); In re Brouwer, 37 USPQ2d 1663 (Fed. Cir. 1995); 1184 OG 86, 3/26/96.

CONCLUSION

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejection of the claims and to pass this application to issue.

If it is determined that a telephone conference would expedite the prosecution of this application, the Examiner is invited to telephone the undersigned at the number given below.

In the event the U.S. Patent and Trademark office determines that an extension and/or other relief is required, applicants petition for any required relief including extensions of time and authorize the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to **Deposit Account No. 03-1952** referencing docket no. **564462008100**. However, the Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

Dated: September 13, 2006

Respectfully submitted,

By 

Gregory P. Einhorn

Registration No.: 38,440
MORRISON & FOERSTER LLP
12531 High Bluff Drive, Suite 100
San Diego, California 92130-2040
(858) 720-5133 direct line
general office 858 720 5100
fax direct 858 523 5933
fax office 858 720 5125
email geinhorn@mofo.com